

October 30, 2023

Via email: permissions.modernization@ontario.ca

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Client Services and Permissions Branch
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**Re: Environmental Registry of Ontario (ERO) notices regarding proposed changes to Ontario's permit-by-rule framework:
Exploring changes to streamline the permit-by-rule framework (ERO number 019-6951)
Streamlining environmental permissions for waste management systems under the Environmental Activity and Sector Registry (ERO number 019-6963)
Streamlining environmental permissions for stormwater management under the Environmental Activity and Sector Registry (ERO number 019-6928)
Streamlining permissions for water takings for construction site dewatering activities and foundation drains (ERO number 019-6853)**

Canadian Environmental Law Association (CELA) has prepared the following analysis and recommendations in response to the four above-noted Environmental Registry of Ontario (ERO) notices, which propose dramatic changes to Ontario's permit-by-rule framework. The undersigned environmental, conservation, and civil society organizations have endorsed CELA's submission. Collectively, **it is strongly recommended that the Ministry of Environment, Conservation and Parks not move ahead with the four proposals.**

PART 1: INTRODUCTION

a. Background

Canadian Environmental Law Association (CELA) is a legal aid clinic dedicated to environmental equity, justice, and health. Founded in 1970, CELA is one of the oldest advocates for environmental protection in the country. CELA provides free legal services relating to environmental justice in Ontario, including representing low-income and vulnerable or disadvantaged communities in litigation. CELA also works on environmental legal education and reform initiatives.

CELA exists to ensure that low-income and disadvantaged people have access to environmental justice through courts and tribunals.

CELA has extensive experience with environmental approvals in Ontario. Specifically, CELA counsel have represented clients in numerous cases involving environmental approvals. Further, a CELA counsel was a member of the Modernization of Approvals multi-stakeholder group, which provided input to the proposed amendments to the Ministry of the Environment, Conservation and Parks' (MECP) environmental approvals system. Finally, CELA has provided comments on previous proposals regarding environmental approvals, including the Proposed Legislative Framework for Modernizing Environmental Approvals (EBR Registry No. 010-9143).

b. The Proposals

The Ministry is proposing to expand the use of its permit-by-rule framework to the following activities:

- Waste Management Systems
- Stormwater Management
- Water-taking for construction site dewatering activities and foundation drains

In addition to expanding the list of eligible activities under the permit-by rule approach, the Ministry is also seeking feedback on whether it should develop a single permit-by-rule regulation and move prescribed rules governing activities into a “code of practice”, as opposed to establishing them in regulations.

c. The Permit-by-Rule Framework

The permit-by rule regime was established in Ontario through the enactment of Bill 68, the *Open for Business Act, 2010*. This led to fundamental changes to the MECP's approval program by the establishment of a self-registration regime. Under this new process, certain activities, that the Ministry deemed to be less complex and a lower risk to the environment, were allowed to simply register their activity on the Environmental Activity and Sector Registry (EASR), a public web-based system, and comply with standard rules that are established by regulation. The activities currently eligible for registration include: specific activities with air emissions; automotive refinishing facilities; commercial printing facilities; non-hazardous waste transportation systems; small ground-mounted solar facilities; facilities processing end-of-life vehicles; and specific water-taking facilities.

According to the Ministry's proposal, there are two main types of EASRs: assessed EASRs and rules based EASRs.

- Assessed EASRs establish eligibility criteria that allow an eligible activity to register, provided a qualified person prepares a technical assessment against a technical environmental outcome, such as a regulatory standard.
- Rules based EASRs where there is no requirement for a qualified person to assess against an environmental outcome.

However, in both cases, the registration process takes place without any up-front detailed review by Ministry staff to ensure that the proposed activity does not cause environmental harm.

PART II: GENERAL COMMENTS ON MECP'S PROPOSALS

a. Proposals do not meet criteria for inclusion in the EASR Regime

The Ministry's approval function is a core government function and an integral component of Ontario's environmental regulatory regime. It serves as the key mechanism through which the Ministry undertakes a proactive up-front assessment to ensure that business operations do not cause harm to Ontario's environment.

It is important to note that the permit-by-rule framework was established in Ontario to ensure that the Ministry could devote its resources to reviewing higher risk activities. As the Environmental Commissioner of Ontario (ECO) has previously stated in the 2017 Annual Report "the reason the MOECC introduced the EASR in the first place was to enable the ministry to focus more resources on the higher-risk activities that pose the greatest threat to the environment; now it needs to do just that. The creation of the EASR will be in vain if the rest of the environmental approvals framework is not also strengthened."¹ In fact, when the permit-by-rule regime was first implemented, only three activities were prescribed under this new process: automotive refinishing; heating systems; and standby power systems.²

The Ministry is disregarding its own criterion for the EASR regime by proposing to include activities that clearly pose a high risk to human health and the environment. These activities include:

- the transportation of asbestos waste, biomedical waste, treated biomedical waste, liquid industrial waste, hazardous waste, PCB waste and naturally occurring radioactive materials;
- removing safe drinking water regulations and Environmental Compliance Approval (ECA) requirements for select stormwater management activities; and

¹ Environmental Commissioner of Ontario, *2017 Annual Report – Good Choices, Bad Choices*, (Toronto: Environmental Commissioner, 2017) at 95.

² Environmental Commissioner of Ontario, *2012/2013 Annual Report*, (Toronto: Environmental Commissioner of Ontario, October 2013) at 144.

- removal of the current volumetric water taking limit of 400,000 litres of ground water per day and substantially amending water-taking permit requirements to allow select activities to remove 379,000 litres of water per day without permit.

CELA is of the firm view that all the proposed waste management systems should remain within the approvals program. The transportation of these wastes is clearly a high-risk activity, which can have significant impacts on human health and the environment. Consequently, it is imperative that prior to commencing operation, these waste management systems should be subject to an individual, up-front assessment by Ministry staff. The approvals program is the only process that allows for Ministry staff with engineering, scientific and technical expertise to undertake an independent review on an applicant's application, supporting documents and reports, to determine what terms and conditions need to be included in the approval to prevent environmental harm, or if the approval should be denied. The opportunity to undertake an up-front assessment also allows the Ministry to consider factors such as a proponent's compliance record to determine whether an approval should be granted.

In contrast, the EASR regime, whether it is an assessed EASR or a rules based EASR, does not lend itself to the independent, up-front scrutiny that is undertaken by the Ministry's approvals program. As the Ministry's proposal notes, "Ontario's current permit by-rule framework allows proponents to self-register activities and start work immediately instead of waiting up to a year for a ministry review."³ Unfortunately, this will be achieved at the expense of ensuring environmental protection in Ontario.

The Ministry asserts in its proposal that that it is seeking input on how to expand the use of its permit-by-rule framework to "reduce delays on projects that matter most to Ontario communities, such as new housing and job-creating businesses."⁴ It is unclear how removing government up-front oversight, for instance, over the transportation of hazardous waste, asbestos waste, biomedical waste and liquid industrial waste is remotely connected to "new housing and job-creating businesses." Consequently, the Ministry has not provided any valid rationale which justifies extending the permit-by-rule regime to waste systems, stormwater management and water-takings.

Furthermore, even if the approvals program were to cause delay before certain activities can commence operating, this needs to be weighed against the importance of ensuring protection of human health and the environment, which is MECP's core regulatory mandate.

b. Proposals will eliminate Public Participation Rights in Environmental Decision-Making

The inclusion of the proposed activities into the permit-by-rule framework will eliminate important public participation rights under the *Environmental Bill of Rights, 1993 (EBR)*. The

³ Ministry of the Environment, Conservation and Parks, "Exploring changes to streamline the permit-by-rule framework", ERO number 019-6951, (August 31, 2023) at 2.

⁴ *Ibid* at 1.

EBR has been hailed as “one of the most comprehensive environmental access to justice laws in Canada.”⁵ The Environmental Registry of Ontario (ERO), an electronic publicly accessible registry which was established pursuant to the *EBR*, has dramatically improved public participation in the environmental decision-making process and also improved environmental outcomes.⁶

The *EBR* requires that government ministries post notice of a proposal to issue an instrument (such as an Environmental Compliance Approval) on the ERO and provide a minimum thirty-day comment period.⁷ In addition, the *EBR* provides the members of the public with an opportunity to appeal instruments, provided they can satisfy the stringent leave test. CELA is very concerned that the Ministry’s expansion of the permit-by-rule framework will eliminate Ontarians rights under the *EBR* and undermine public participation in the environmental decision-making process.

These concerns have also been raised by the ECO:

The EASR process eliminates the public’s right under the *Environmental Bill of Rights, 1993* (*EBR*) to comment on and/or seek leave to appeal approvals of individual facilities now subject to EASR registration. While this is somewhat tempered by the public’s opportunities to comment on proposals to prescribe activities for purposes of the EASR, as well the accessibility of EASR registration information on the MOE’s website, **the EASR nevertheless represents a step back for public participation rights under the *EBR*.**⁸ (emphasis added)

c. No consideration of cumulative impacts

The *EBR* requires government ministries to prepare a Statement of Environmental Values (SEVs), indicating how the purposes of the *EBR* are to be applied: (i) when decisions that might significantly affect the environment are made; and, (ii) explaining how the consideration of the Act’s purposes should be integrated with other considerations, such as social, economic and scientific consideration in the decision-making process.⁹

The Ministry’s SEV states that as it considers the development of Acts, regulation and policies, it will consider the “cumulative effects on the environment; the interdependence of air, land, water

⁵ Joseph F. Castrilli and Richard D. Lindgren, Leave to Appeal under Ontario’s Environmental Bill of Rights: *Lafarge Canada Inc v. Ontario* (Environmental Review Tribunal) in William A Tilleman and Alastair R. Lucas Q.C, *Litigating Canada’s Environment: Leading Canadian Environmental Cases by the Lawyer Involved*, (Toronto: Thomson Reuters Canada Limited, 2017) at 151.

⁶ See Environmental Commissioner of Ontario, *The Environmental Bill of Rights, Your Environment, Your Rights* (Booklet) (Toronto: Environmental Commissioner of Ontario, January 2015) at 3.

⁷ *Environmental Bill of Rights, 1993*. (*EBR*) S.O. 1993, c. 28, s.22.

⁸ Environmental Commissioner of Ontario, *2012/2013 Annual Report*, (Toronto; Environmental Commissioner of Ontario, October 2013) at 146.

⁹ *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28, s.7.

and living organisms; and the relationships among the environment, the economy and society.”¹⁰ The ECO has previously recommended that all forms of approvals, including registrations, take into account the potential cumulative effects.¹¹ While the ECO recommendations were made in the context of local air quality, CELA believes this recommendation is equally applicable to water-takings. For example, in relation to the water-taking proposal, there is no opportunity for Ministry staff to consider and assess the potential cumulative impacts of other water takings in a region or shared watershed before a substantial water taking for a proposed construction site is allowed to proceed. Despite the requirement that a Qualified Person (QP) assess whether a monitoring plan should be in place, the QP cannot assess what the impact would be in relation to additional surrounding water-takings. While an individual water-taking may not, by itself, pose a risk to the environment, numerous water-takings in close proximity may produce cumulative impacts which could have adverse impacts to the natural environment. To increase allowable water-taking without permit by over a 700% increase without a strategy for cumulative impacts assessment is a major misstep in this proposal.

Further, in the webinars hosted by the Ministry on the various proposals, Ministry staff were unable to respond to questions from attendees about how cumulative effects would be addressed if these proposals were to be implemented.

PART III: SPECIFIC COMMENTS ON THE PROPOSALS

1) Proposal to extend Permit-by-Rule to certain types of waste

a. Proposed wastes categories pose serious risks to human health and the environment

The Ministry is proposing to extend the permit-by-rule regime to the following categories of waste: asbestos waste; biomedical waste; treated biomedical waste; hazardous waste; liquid industrial waste; treated waste that is no longer characteristic waste, if the waste may not be disposed of by land disposal; polychlorinated biphenyl (PCB) waste; and naturally occurring radioactive waste. The transportation of these types of wastes poses serious risks to human health and the natural environment. A brief summary of the environmental and human health risks of some of these wastes are outlined in more detail below:

- **Asbestos Waste:** Breathing asbestos fibres can cause lung cancer, asbestosis (a scarring of the lungs, which makes it difficult to breathe, and mesothelioma, a rare cancer of the lining of the chest or abdominal cavity, and other diseases.¹²

¹⁰ Statement of Environmental Values: Ministry of the Environment and Climate Change (King's Printer for Ontario).

¹¹ Environmental Commissioner of Ontario, *2017 Annual Report – Good Choices, Bad Choices*, (Toronto: Environmental Commissioner, 2017) at 95.

¹² Government of Canada & Health Canada, “Asbestos and Your Health” (10 February 2023), online: <https://www.canada.ca/en/health-canada/services/air-quality/indoor-air-contaminants/health-risks-asbestos.html>.

- **Biomedical Waste:** Biomedical waste includes many different types of waste, including, but not limited to blood waste, sharps waste, human anatomical waste and animal anatomical waste. The Ontario government has stated that “[a]lthough biomedical waste is estimated to represent less than ten percent of the waste generated by the health care field, it poses risk to public health and the environment and therefore, must be segregated and managed accordingly.”¹³ “The inadequate disposal of biomedical waste can cause serious health impacts to humans and may lead to the transmission of diseases such as typhoid, cholera and hepatitis through injuries from sharps contaminated with blood.”¹⁴
- **Treated Biomedical Waste:** The Ministry defines “treated biomedical waste” as biomedical waste that has been treated utilizing non-incineration treatment criteria as outlined in section 5.2 of *Guideline C-4: The Management of Biomedical Waste in Ontario*. Treated biomedical waste poses concerns as the chemical used for treatment may cause adverse impacts to human health and natural environments.
- **Liquid Industrial Waste:** Liquid Industrial Waste means waste that is liquid generated from an industrial, commercial or institutional facility and does not meet the definition of hazardous waste.¹⁵ A more specific definition of liquid industrial waste is provided in section 1 of Ontario Regulation 347 General – Waste. According to a MECP report, “hazardous and liquid industrial waste includes a broad range of materials such as manufacturing residues (e.g. waste acids, contaminated sludges, and complex chemicals) landfill leachate, biomedical wastes from the health care sector, spent photo finishing chemicals, waste pesticides, PCBs, motor oil, unused cleaning products from homes, and discarded batteries.”¹⁶ Consequently, the MECP’s report asserts that these wastes require special handling to reduce potential effects on human health and the environment.¹⁷
- **Hazardous Waste:** According to the MECP, “[h]azardous waste are waste that, when present in quantities and concentrations that are high enough, pose a threat to human health or the environment if they are improperly stored, transported, treated, or disposed.” The Ministry notes that hazardous wastes “require special handling and management and that to manage hazardous waste appropriately, there must be systematic control of how they are collected, stored, transported, treated, recovered, and disposed.” Furthermore, according to the Ministry, “[i]mproper management or

¹³ Ministry of the Environment, Conservation and Parks, “C-4: The Management of Biomedical Waste in Ontario” (31 March 2016), online: <https://www.ontario.ca/page/c-4-management-biomedical-waste-ontario#section-0>.

¹⁴ Javid Manzoor & Manoj Sharma, “Impact of Biomedical Waste on Environment and Human Health” (30 May 2019) 31:4 *Env’t Claims J* 311-334 at 311-312.

¹⁵ Ministry of the Environment, *2008 Ontario Hazardous Waste Report* (Toronto: Ontario Ministry of the Environment, February 2010) at vi, online: <https://www.nswai.org/docs/Ontario%20Hazardous%20Waste%20Report.pdf>.

¹⁶ *Ibid.* at 2.

¹⁷ *Ibid.*

disposal of hazardous waste can have a direct, or indirect, impact on many aspects of the environment, human health, and the economy.¹⁸

- **PCB Waste:** Ontario Regulation 362 regulates PCB waste.¹⁹ Ontario Regulation 362 defines PCB waste as PCB equipment, PCB liquid, or PCB material, subject to certain exemptions. According to Health Canada, the adverse effects associated with exposure to PCBs include “a severe form of acne (chloracne), swelling of the upper eyelids, discolouring of the nails and skin, numbness in the arms and/or legs, weakness, muscle spasms, chronic bronchitis, and problems related to the nervous system.”²⁰ In addition, the International Agency for Research on Cancer (IARC) has concluded that there is some evidence to link long-term, high-level PCBs exposure in occupational settings to an increased incidence of cancer, particularly liver and kidney cancer.”²¹
- **Naturally Occurring Radioactive Materials:** Naturally occurring Radiative Materials (NORM) could include naturally occurring uranium found in soil and rock, which upon breakdown can release radon. According to Health Canada, “[l]ong-term exposure to radon is the 2nd leading cause of lung cancer, after smoking, and the leading cause of cancer in people who have never smoke.”²²

b. Other Indicators of the Environmental Risk Associated with the Proposed Wastes

i. Higher Penalties in Environmental Statutes

CELA notes that the environmental risks associated with many of these types of waste is also reflected in the penalty regime under the *Environmental Protection Act*, (EPA) which imposes significantly higher penalties for offences related to hauled liquid industrial waste and hazardous waste. The maximum fines against corporations for offences involving these types of waste can range from six to ten million dollars, whereas individuals face maximum fines ranging from four to six million dollars, as well as the possibility of a jail sentence.²³

¹⁸ Ministry of Environment, Conservation and Parks, “Registration Guidance Manual for Generators of Liquid Industrial and Hazardous Waste” (17 May 2023) at 21, online: <https://www.ontario.ca/document/registration-guidance-manual-generators-liquid-industrial-and-hazardous-waste>.

¹⁹ R.R.O. 1990, Reg. 362: Waste Management - PCB's under *Environmental Protection Act*, R.S.O. 1990, c. E.19.

²⁰ Health Canada, “It’s Your Health: PCBs” (October 2005), online: <https://www.canada.ca/en/health-canada/services/healthy-living/your-health/environment/pcbs.html>.

²¹ *Ibid.*

²² Health Canada, Radon: About, (2023-06-16), online: <https://www.canada.ca/en/health-canada/services/health-risks-safety/radiation/radon.html>.

²³ *Environmental Protection Act*, R.S.O. 1990, c. E.19, ss. 187(4)-(5).

ii. Removal of Financial Assurance Requirements

The Ministry is also proposing to remove the financial assurance requirements that currently only apply to PCB and biomedical waste haulers. The financial assurance requirement serves as an important tool to ensure that taxpayers are not left with the liability for the cleanup costs in the event of a hazardous waste spill. The Ministry is proposing instead to rely on insurance coverage for liability resulting from spill and is proposing to limit the coverage to \$500,000 for any one incident for haulers transporting liquid industrial, hazardous, or biomedical waste.

The concern with relying on insurance provided by a third party is that coverage can be denied and the Ministry may not be readily able to access funds to ensure a prompt clean-up of a spill. Moreover, the Ministry has not provided adequate information to justify its proposal to limit insurance coverage to \$500,000 for an incident involving hauled liquid industrial waste, hazardous waste, or biomedical waste.

The Auditor General of Ontario has been critical about the Ministry's failure to provide public information regarding quantity of hazardous spills in Ontario and the harm they have caused.²⁴ This includes "information on the specific locations where spills occur, who caused the spills, or the specific impacts the spills have had, or may have, on human health and/or the environment." In view of this lack of information, it is difficult, if not impossible, to assess whether the coverage limit the Ministry is proposing is adequate to address hazardous spills in Ontario.

iii. Poor Compliance Record

Ontario has had a lengthy history of serious problems related to the transportation of hazardous waste. These problems have been the subject of criticism by the Auditor General in several reports. In the 2007 Annual Report on hazardous waste management, the Auditor General noted that:

The Ministry utilizes a checklist to ensure that all required information for certificate-of approval applications is received and documentation is complete. We reviewed a sample of applications processed in the 2005/06 fiscal year and noted that applications for waste disposal sites were generally complete, but **over half of the carrier applications tested were missing required documents such as detailed operational plans and proof of specialized driver training** (emphasis added).²⁵

In a 2021 report on hazardous spills, the Auditor General stated that the "Environment Ministry oversight and regulation of activities that may cause environmentally harmful spills requires a strong enforcement regime."²⁶ However, the Auditor General found "that the Environment

²⁴ Auditor General of Ontario, "Value-for-Money Audit, Hazardous Spills" (November 2021) at 2, online: https://www.auditor.on.ca/en/content/annualreports/arreports/en21/ENV_HazardousSpills_en21.pdf. [Auditor General of Ontario].

²⁵ Auditor General of Ontario, "2007 Annual Report – Hazardous Waste Management" (2007) at 87, online: <https://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2007.html>.

²⁶ Auditor General of Ontario, *supra* note 24 at 3.

Ministry's approach to enforcement was lenient and relied mostly on asking violators of environmental laws and regulations to comply, instead of using its powers to confirm full compliance by a required date."²⁷

The Ministry's proposal to exempt waste haulers from the approvals program is particularly troubling, given the poor record of regulatory compliance by waste haulers and the lack of an effective inspection and enforcement program.

The Ministry's Discussion Paper on the EASR proposal for Waste Management Systems fails to provide any information about how it intends to ensure monitoring and enforcement of activities subject to the EASR registration process. The Discussion Paper states that "a waste management system not in compliance with the operating requirements of the proposed EASR regulation would be subject to the same compliance action and/or penalties as the regulated community that are not complying with an ECA."²⁸ However, there are no details on whether more staff and resources will be allocated to address the need for additional inspection and enforcement of new activities subject to the permit-by-rule regime.

In conclusion, CELA submits that the proposal to include asbestos waste; biomedical waste; treated biomedical waste; liquid industrial waste; hazardous waste; treated waste that is no longer characteristic waste, if the waste may not be disposed of by land disposal; PCB waste; and naturally occurring radioactive materials in the permit-by-rule framework is a dangerous, ill-conceived proposal which should be abandoned.

Recommendation 1: CELA recommends that the Ministry not adopt the proposal to extend the permit-by rule framework to the proposed waste management systems.

2) Proposal to the extend permit-by rule framework to water takings for construction site dewatering or residential foundation drains

a. The proposal puts already vulnerable freshwater supplies further in jeopardy

CELA stresses, as in past submissions²⁹, that the amount of water that is available based on long term sustainability and other goals – such as meeting population growth targets, ensuring climate change resiliency, and realizing benefits to future generations – is finite. The management and prioritization of uses, therefore, needs to first and foremost recognize this reality. Recent legislative changes to conservation authorities' roles and responsibilities, including but not

²⁷ *Ibid.*

²⁸ Ministry of the Environment, Conservation and Parks, "Discussion Paper on the EASR proposal for Waste Management Systems" (August 2023) at 27, online: https://prod-environmental-registry.s3.amazonaws.com/2023-08/2.%20Discussion%20Paper%20-%20Waste%20Mgmt%20EASR%20-%20Final_0.pdf.

²⁹ Canadian Environmental Law Association, "Proposed Implementation of Updates to Ontario's Water Quantity Management Framework (ERO Number 019-2017)" (5 February 2021), online: <https://cela.ca/wp-content/uploads/2021/02/CELA-Response-Updates-to-Ontario-Water-Quantity-Managment-Framework.pdf> [CELA].

limited to Bill 23³⁰ and within this proposal, are likely to make water use management an even bigger challenge in the future.

In 2020, CELA wrote a comment letter³¹ regarding the MECP proposal “Updating Ontario’s Water Quantity Management Framework”³². Outlined in the comment letter were concerns arising from a study by BluMetric Environmental Inc., who were commissioned by the MECP, which highlighted the vulnerability in municipal water supply due to growth, land-use changes, drought and climate change. Of note, it is anticipated that in Guelph-Wellington County and Orangeville there will be challenges meeting future municipal supply needs. In those areas, future reliance on groundwater as a municipal water supply was uncertain while surface water resources are expected to become unsustainable. Considering the vulnerability of water resources in these areas and beyond, the MECP’s proposal to amend O. Reg 63/16³³ under the *Environmental Protection Act*³⁴ to remove the 400,000 volumetric limit of groundwater for construction site dewatering is careless. The language in the regulation is not clear in determining which construction sites will be included; if the site is for housing construction, and a new sub-division is being built, will the roads to get to the sub-division be included? Will the current “short-term” regulations of 7, or 30 days be included in the proposal? Under the current draft, the prescribed criteria for timeframe of construction site dewatering are absent.

Further, the MECP’s proposal to remove the current requirements to notify the local Conservation Authority (CA) of these water takings is without any scrutable justification. CAs keep track of water budgets and have comprehensive understanding of local aquifers that is essential to the health of families who rely on wells. CELA strongly opposes the Ministry’s proposal to remove the requirement to notify local conservation authorities of water taking activities.

The Ministry’s proposal to amend O. Reg 387/04³⁵ under the *Ontario Water Resources Act* (OWRA)³⁶ to move the water-taking limit without permit from 50,000 litres per day to 379,000 litres per day puts already stressed municipal water supplies further at risk. The purpose of the OWRA (and associated regulations) is to provide for the conservation, protection and wise use and management of Ontario’s waters, because Ontario’s water resources are essential to the long-term environmental, social and economic well-being of Ontario. The MECP’s proposal to allow rapidly increasing limits to water-taking while reducing source water protections and without an explicit strategy for cumulative assessment is irresponsible. Permitting allows the Ministry to review applications in relation to other water taking activities and make an assessment about

³⁰ Bill 23, *More Homes Built Faster Act*, 2022.

³¹ Canadian Environmental Law Association, “ERO 019-1340, Updating Ontario’s Water Quantity Management Framework” (23 July 2020), online: <https://cela.ca/wp-content/uploads/2020/07/Response-Water-Quantity-Management-Framework.pdf>.

³² Ministry of the Environment, Conservation and Parks, “Updating Ontario’s Water Quantity Management Framework”, ERO number 019-1340, (31 March 2021), online: <https://ero.ontario.ca/notice/019-1340>.

³³ O. Reg. 63/16: Registrations under Part II.2 of the Act - Water Taking under *Environmental Protection Act*, R.S.O. 1990, c. E.19.

³⁴ *Environmental Protection Act*, R.S.O. 1990, c. E.19.

³⁵ O. Reg. 387/04: Water Taking and Transfer under *Ontario Water Resources Act*, R.S.O. 1990, c. O.40.

³⁶ *Ontario Water Resources Act*, R.S.O. 1990, c. O.40.

cumulative impacts. CELA strongly opposes reducing water-taking activities that are subject to permitting, and as suggested previously to the MECP³⁷, CELA recommends that the government undertake a full, meaningful, and public review of Ontario's water policy framework.

b. CELA is concerned that removing the 400,000 L/day ceiling to water-taking under the EASR regime creates compliance concerns for Ontario under the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement

As Party to the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (Regional Agreement)³⁸, Ontario is required to adhere to stipulated guidelines. The interpretation of Articles 203 and 206 of the Regional Agreement bring into question Ontario's compliance, specifically with regards to the potential removal of the 400,000 litres per day threshold for groundwater withdrawal.

Article 203 of the Agreement provides a standard for the decision-making process to manage of water withdrawals and consumptive uses; more specifically, the language used in Article 203 calls for a strategy to ensure water-taking does not result in adverse cumulative effects. Pursuant to subsection 2 of Article 206, Ontario must justify why projects can surpass the default standard of 379,000 litres per day without a permit or an Environmental Compliance Approval (ECA).

Ontario must provide a valid rationale for its intention to eliminate the established threshold standard, without requiring a comprehensive analysis or strategy to address potential cumulative effects. This underscores the imperative for Ontario to transparently articulate its compliance strategies and justifications, to ensure the environmental obligations set forth in the Agreement, and to maintain the integrity of water resources within the Great Lakes-St. Lawrence River Basin.

c. The Ministry is seeking feedback on municipal sewer-use bylaws; such an inquiry lends to the suggestion that sewer-use bylaw criteria may be reduced by the Ministry, threatening municipal authority to protect drinking water and the health of its residents

The Ministry is seeking feedback on municipal sewer-use bylaws, specifically, 'why do municipalities impose such stringent criteria for developers, such as requiring the design of treatment systems for foundation drains to meet sewer-use bylaw criteria that are more stringent than drinking water standards?' Sewer-use bylaw criteria is stringent because it's easier to prevent contamination than to treat it³⁹. CELA strongly supports municipal enforcement of set criteria.

³⁷ CELA, *supra* note 29.

³⁸ *Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement* (13 December 2005).

³⁹ Robert J. Patrick, "Source water protection in a landscape of 'New Era' deregulation" (1 June 2009) 53:2 *Canadian Geographer* 208-221.

Following the Walkerton crisis, laws and regulations have been put in place as a result of Justice O'Connor's recommendations⁴⁰ to prevent the initial contamination of source water as well as to ensure that water treatment systems are capable of removing any dangerous substances before water reaches the tap. Though source protection is a less visible part of this approach, CELA Executive Director and Counsel Theresa McClenaghan has stressed, it is "an essential piece of the puzzle."⁴¹ Through regulations there is an effort to stop contaminants from entering the source of drinking water in the first place. CELA Counsel Rick Lindgreen has cautioned, "I think we saw first hand the effects of an over ambitious attempt to cut so-called red tape by the provincial government at the time and I think we now know that deregulation is dangerous."⁴²

CELA underscores the critical importance of meticulously assessing the potential repercussions of contaminated water infiltrating wells, alongside a thorough and extensive evaluation of the aquifer, as a priority over expedited regulatory processes. For instance, there are crucial considerations such as determining the responsible parties and methodologies for testing the water extracted during de-watering processes for any contamination, as well as the subsequent steps to be taken upon potential aquifer penetration. Moreover, it raises concerns about the efficacy of the oversight from the Ministry of the Environment, Conservation and Parks (MECP), particularly when the management of such significant environmental matters is left to a self-approval mechanism, questioning how the MECP would remain informed and ensure accountability regarding the aquifer's condition and safety.

Unregulated water-taking from aquifers can substantially affect their cone of influence⁴³, leading to an expanded area of impact and a lowered water table. Excessive pumping can result in reduced water availability for neighboring wells, in turn increasing costs for users due to the need for deeper wells or more powerful pumps, while resulting in water quality degradation. Water permits can be effective in managing aquifer health by withholding permits that are found to interfere seriously with other users, as outlined in an earlier document of Ontario's water quality objectives⁴⁴; importantly, a permit can impose conditions by the Ministry, while a self-regulation scheme cannot. Moreover, unregulated water-takings can lead to the long-term depletion of the aquifer, which may be slow to recharge. These impacts highlight the critical need for robust groundwater management and regulation to ensure sustainable water use, to protect ecosystems, and the communities who rely on them.

⁴⁰ Dennis R. O'Connor, "Report of the Walkerton Inquiry: The Events of May 2000 and Related Issues" (2002), online: https://www.archives.gov.on.ca/en/e_records/walkerton/.

⁴¹ Canadian Environmental Law Association, "Blog: Walkerton's Drinking Water Protection Legacy" (28 May 2020), online: <https://cela.ca/blog-walkertons-drinking-water-protection-legacy/>.

⁴² *Ibid.*

⁴³ Government of Ontario, "2021 Technical Rules under the *Clean Water Act*" (16 February 2023), online: <https://www.ontario.ca/page/2021-technical-rules-under-clean-water-act#:~:text=the%20cone%20of%20influence%20of,impact%20on%20the%20wells%3B%20and.>

⁴⁴ Government of Ontario, "Water Management: Policies, Guidelines, Provincial Water Quality Objectives" (16 August 2021), online: <https://www.ontario.ca/page/water-management-policies-guidelines-provincial-water-quality-objectives>.

Recommendation 2: CELA recommends that the Ministry not adopt the proposal to extend the permit-by rule framework to the proposed water-taking for construction site dewatering and residential foundation drains.

3) Proposal to the extend permit-by-rule framework to water takings for stormwater management

a. The Ministry's proposal to extend permit-by-rule framework to broad stormwater management projects raises concerns of ministerial capacity for oversight, and compliance enforcement

The Ministry is proposing a new regulation under the *Environmental Protection Act* to allow owners of certain stormwater management works to self-register on the EASR, which removes the requirement for an ECA in place of the rules drawn in the EASR; the existing regulations establish sector-specific contaminant limits and before discharging back into Ontario's waterbodies, and for this reason, among others, an ECA is an essential tool for stormwater management. Included in the Ministry's proposal is an amendment to O. Reg 525/98⁴⁵ made under the OWRA to remove the need for an ECA for certain low risk sewage works, including exemptions for drainage works on roadways and railways that are not already covered under the OWRA such as those owned by Metrolinx. On review of the MECPs proposal, the justification for removing the ECA requirement is to remove the wait-time to accommodate ministerial review and allow industry to proceed immediately following self-registration; this argument is both unpersuasive and raises concerns regarding ministerial capacity when the overload of projects move from the commencement phase to monitoring and compliance. Moreover, the language in this proposal does not specify which stormwater works will be eligible, and the room for interpretation is concerning.

b. The Ministry's proposal to extend permit-by-rule framework to broad stormwater management projects weakens source protection plans

The Ministry is proposing to amend O Reg. 287/07⁴⁶ made under the *Clean Water Act, 2006* (CWA)⁴⁷, by removing select policies included in source protection plans under the assumption they will be adequately managed through rules agreed to via self-registering on the EASR. The Ontario Legislature enacted the CWA, which allows for a multi-barrier approach⁴⁸ to protecting drinking water and establishes a process for developing enforceable source protection plans that protect drinking water sources; the justification to reduce the burden here negates the instinct of

⁴⁵ O. Reg. 525/98: Approval Exemptions under *Ontario Water Resources Act*, R.S.O. 1990, c. O.40.

⁴⁶ O. Reg. 287/07: General under *Clean Water Act, 2006*, S.O. 2006, c. 22.

⁴⁷ *Clean Water Act, 2006*, S.O. 2006, c. 22.

⁴⁸ Government of Canada, "From Source To Tap - The Multi-Barrier Approach To Safe Drinking Water" (2002), online: <https://www.canada.ca/en/health-canada/services/environmental-workplace-health/reports-publications/water-quality/source-multi-barrier-approach-safe-drinking-water-health-canada.html>.

the multi-barrier approach, and as the mandates for stormwater management and source water protection are vastly different the regulations are not duplicative. Some scholars argue that there are numerous vulnerabilities that the current regulation does not cover weakening the efficacy of source water protection, including issues related to the availability of groundwater, the expansion of urban areas, and lands already polluted.⁴⁹ Further, there is a lack of jurisdictional oversight, which has resulted in a water crisis in numerous First Nations communities, where the primary issue is contaminated source water. Proposing to restrict authority in current source protection plans under the assumption that self-registration on the EASR will suffice threatens to weaken the protective measures safeguarding drinking water sources. This is alarming, considering the crucial need to uphold enforceable source protection plans.

Reducing permitting for safe drinking water to expedite development puts human and environmental health at risk. There is substantive scholarship highlighting the benefit of a multi-barrier approach in both municipal and private contexts⁵⁰; some of the benefits include safeguarding the sources of drinking water, which involves managing the quantity and quality of source water; regulating water withdrawals, and protecting vital areas like wellheads, groundwater recharge zones, headwaters, and aquifers; necessitating the establishment, ongoing review, and updating of related policies, standards, and regulations relating to water quality, and the construction, operation, and maintenance of water infrastructure systems. Licensing, permitting, and assessment to approve for the design, construction, and operation of these stormwater systems is critical to protecting source water.

Moreover, mechanisms for handling public complaints about water system operations or water quality, as well as for addressing incidents of compromised drinking water quality, are integral; transitioning stormwater management to the EASR regime limits public participation. A multibarrier approach incorporates oversight and ensures information is disseminated to multiple locations to prevent the failure of any single system which could lead to serious systemic issues; the EASR regime limits these functions and transparency.

The Ministry proposes to transition the responsibility from government oversight to a licensed engineering practitioner (LEP)⁵¹ to assess and identify whether stormwater management works will pose a significant drinking water threat in a source protection plan. If the LEP determines that the works are a significant drinking water threat, the LEP would be required to consider additional management measures. While LEPs are qualified professionals, this responsibility shift raises concerns about potential conflicts of interest, accountability, and consistency in stormwater management across different projects and regions. Different LEPs may have varying standards and interpretations when assessing the significance of drinking water threats, leading to potential inconsistencies and varied levels of protection across different areas. Moreover,

⁴⁹ Brina McMillan, “Considerations for Source Water Protection in Ontario” (2016), online: <https://yorkspace.library.yorku.ca/items/efe49b23-9886-4a45-8551-762292374e1f>.

⁵⁰ Mark S. Windfield, “The Devolution of Local Water Management Lessons from Ontario and Canada” (25 February 2002), online: https://www.pembina.org/reports/devolution_h2o_mgmt_02-25-02.pdf.

⁵¹ Engineers Canada, “Qualified Person vs. Licensed Engineer”, online: <https://engineerscanada.ca/sites/default/files/public-policy/nps-qualified-person-licensed-en.pdf>.

LEPs are not required nor equipped to conduct a cumulative assessment of impacts to various stormwater projects to source point protection. Lessons from the Walkerton crisis left us informed of the dangers of privatization and tightening economic expenditures at the expense of protecting drinking water.

Recommendation 3: CELA recommends that the Ministry not adopt the proposal to extend the permit-by rule framework to the proposed stormwater management works.

4) Proposal to Develop a Single Permit-by-Rule Regulation

The Ministry is also seeking input on its proposal to develop a single permit-by-rule regulation to replace the existing EASR regulations. The single regulation is intended to be more generic and include minimum requirements that must be met by all permit-by-rule activities. The sector specific rules would be moved outside of regulation and into “codes of practice.” CELA is concerned that this would further erode an opportunity for public input as “codes of practice” are not an instrument under the *EBR*, and thus would not be subject to notice and comment provisions. Consequently, such a move would even further reduce public participation in environmental decision-making than that which currently exists under the EASR regime.

Recommendation 4: CELA does not support the proposal to move prescribed rules for the EASR regime into “codes of practice” as it would further erode public participation in the environmental decision-making process.

PART IV: SUMMARY OF RECOMMENDATIONS

As outlined above, CELA has assessed the four interrelated Environmental Registry of Ontario (ERO) notices which propose dramatic changes to Ontario’s permit-by-rule framework. The undersigned environmental, conservation, and civil society organizations have endorsed CELA’s submission. Collectively, the recommendations are summarized as follows:

With respect to the proposal “Streamlining environmental permissions for waste management systems under the Environmental Activity and Sector Registry” (ERO number 019-6963):

Recommendation 1: CELA recommends that the Ministry not adopt the proposal to extend the permit-by rule framework to the proposed waste management systems.

With respect to the proposal “Streamlining environmental permissions for stormwater management under the Environmental Activity and Sector Registry” (ERO number 019-6928):

Recommendation 2: CELA recommends that the Ministry not adopt the proposal to extend the permit-by rule framework to the proposed water-taking for construction site dewatering and residential foundation drains.

With respect to the proposal “Streamlining permissions for water takings for construction site dewatering activities and foundation drains” (ERO number 019-6853):

Recommendation 3: CELA recommends that the Ministry not adopt the proposal to extend the permit-by rule framework to the proposed stormwater management works.

With respect to the proposal “Exploring changes to streamline the permit-by-rule framework” (ERO number 019-6951):

Recommendation 4: CELA does not support the proposal to move prescribed rules for the EASR regime into “codes of practice” as it would further erode public participation in the environmental decision-making process.

We are willing to meet and discuss CELA’s submission at your convenience.

Sincerely,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Ramani Nadarajah
Counsel



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Water Policy Coordinator

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The undersigned environmental, conservation, and civil society organizations have endorsed CELA’s submission.

Katie Krelove, Ontario Campaigner, **Wilderness Committee**

Linda Heron, Chair, **Ontario Rivers Alliance**

John Jackson, Coordinator, **Citizens' Network on Waste Management**

Barbara Steinhoff, Executive Director, **Earthroots**

Claire Malcolmson, Executive Director, **Rescue Lake Simcoe Coalition**

Rupert Kindersley, Executive Director, **Georgian Bay Association**

Kerry Le Clair, Co-founder, **Pivot Centre for Collective Action**

Anne Bell, Director of Conservation and Education, **Ontario Nature**

Dani Lindamood, Programs Director, **Water Watchers**

Isabel Fleisher, National Manager, Water Monitoring Hubs and Gregory Ford, Director of Water Programs, **Swim Drink Fish**

Derek Coronado, Executive Director, **Citizens Environment Alliance of Southwestern Ontario**

Michele Grenier, Executive Director, **Ontario Water Works Association**

Michelle Woodhouse, Program Manager, Water, **Environmental Defence**